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## DEPARTMENT OF COMMERCE

### International Trade Administration

[C-508-813]

### Magnesium from Israel: Initiation of Countervailing Duty Investigation

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**DATES:** Applicable November 13, 2018.

**FOR FURTHER INFORMATION CONTACT:** Lana Nigro at (202) 482-1779 or Ethan Talbott at (202) 482-1030, AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC, 20230.

### SUPPLEMENTARY INFORMATION:

#### The Petition

On October 24, 2018, the U.S. Department of Commerce (Commerce) received a countervailing duty (CVD) petition concerning imports of magnesium from Israel, filed in proper form on behalf of US Magnesium LLC (the petitioner), a domestic producer of magnesium.<sup>1</sup> The CVD Petition was accompanied by an antidumping (AD) Petition concerning imports of magnesium imports from Israel.

On October 26 and 29, 2018, and November 5 and 7, 2018, Commerce requested supplemental information pertaining to certain aspects of the Petition in four separate supplemental questionnaires, two addressing Volume I of the Petition and two addressing

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<sup>1</sup> See the petitioner's Letter, "Petitions for the Imposition of Antidumping and Countervailing Duties on Imports of Magnesium from Israel," dated October 24, 2018 (Petition).

Volume II of the Petition (*i.e.*, the CVD allegation).<sup>2</sup> The petitioner filed responses to these requests on October 30 and 31, 2018, and November 6 and 9, 2018.<sup>3</sup>

In accordance with section 702(b)(1) of the Tariff Act of 1930, as amended (the Act), the petitioner alleges that the Government of Israel (GOI) is providing countervailable subsidies, within the meaning of sections 701 and 771(5) of the Act, to producers of magnesium in Israel and that imports of such products are materially injuring, or threatening material injury to, the domestic industry producing magnesium in the United States. Consistent with section 702(b)(1) of the Act and 19 CFR 351.202(b), for those alleged programs on which we are initiating a CVD investigation, the Petition is accompanied by information reasonably available to the petitioner supporting their allegations.

Commerce finds that the petitioner filed the Petition on behalf of the domestic industry because the petitioner is an interested party as defined in section 771(9)(C) of the Act. Commerce also finds that the petitioner demonstrated sufficient industry support with respect to the initiation of the requested CVD investigation.<sup>4</sup>

#### Period of Investigation

Because the Petition was filed on October 24, 2018, the period of investigation is January 1, 2017, through December 31, 2017.

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<sup>2</sup> See Commerce Letters, “Petition for the Imposition of Countervailing Duties on Imports of Magnesium from Israel: Supplemental Questions,” dated October 26, 2018, “Petition for the Imposition of Countervailing Duties on Imports of Magnesium from Israel: Supplemental Questions,” dated October 29, 2018, Memorandum, “RE: Petitions for the Imposition of Antidumping and Countervailing Duties on Imports of Magnesium from Israel – Phone Call with Counsel to the Petitioner,” dated November 5, 2018, and “Petition for the Imposition of Countervailing Duties on Imports of Magnesium from Israel: Supplemental Questions,” dated November 7, 2018.

<sup>3</sup> See the petitioner’s letters, “Magnesium from Israel/Responses to Supplemental Questions on the Countervailing Duty Volume of the Petition” dated October 30, 2018 (CVD Supplement), “Magnesium from Israel/Petitioner’s Response to the Department’s Questions Regarding the General Issues Volume of the Petition” dated October 31, 2018 (General Issues Supplement), “Magnesium from Israel/Petitioner’s Response to the Department’s November 5, 2018 Request,” dated November 6, 2018 (Second General Issues Supplement), and “Magnesium from Israel/Responses to Second Supplemental Questions on the Countervailing Duty Volume of the Petition,” dated November 9, 2018 (Second CVD Supplemental).

<sup>4</sup> See the “Determination of Industry Support for the Petition” section, *infra*.

### Scope of the Investigation

The product covered by this investigation is magnesium from Israel. For a full description of the scope of this investigation, *see* the Appendix to this notice.

### Scope Comments

During our review of the Petition, Commerce contacted the petitioner regarding the proposed scope language to ensure that the scope language in the Petition is an accurate reflection of the products for which the domestic industry is seeking relief.<sup>5</sup> As a result of the petitioner's submission, the scope of the Petition was modified to clarify the description of merchandise covered by the Petition. The description of the merchandise covered by this initiation, as described in the Appendix to this notice, reflects these clarifications.

As discussed in the *Preamble* to Commerce's regulations, we are setting aside a period for interested parties to raise issues regarding product coverage (scope).<sup>6</sup> Commerce will consider all comments received from interested parties and, if necessary, will consult with interested parties prior to the issuance of the preliminary determination. If scope comments include factual information,<sup>7</sup> all such factual information should be limited to public information. To facilitate preparation of its questionnaires, Commerce requests that all interested parties submit scope comments by 5:00 p.m. Eastern Time (ET) on December 3, 2018, which is 20 calendar days from the signature date of this notice. Any rebuttal comments, which may include factual information, must be filed by 5:00 p.m. ET on December 13, 2018.<sup>8</sup>

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<sup>5</sup> See General Issues Supplement, at 1-4 and Exhibit I-S-8; *see also* Second General Issues Supplement at, 2 and Exhibit I-S14.

<sup>6</sup> See *Antidumping Duties; Countervailing Duties, Final Rule*, 62 FR 27296, 27323 (May 19, 1997).

<sup>7</sup> See 19 CFR 351.102(b)(21) (defining "factual information").

<sup>8</sup> See 19 CFR 351.303(b). Rebuttal comments are normally due 10 days after the comment deadline.

Commerce requests that any factual information parties consider relevant to the scope of the investigation be submitted during this period. However, if a party subsequently finds that additional factual information pertaining to the scope of the investigation may be relevant, the party may contact Commerce and request permission to submit the additional information. All such submissions must be filed on the records of the concurrent AD and CVD investigations.

#### Filing Requirements

All submissions to Commerce must be filed electronically using Enforcement and Compliance's Antidumping Duty and Countervailing Duty Centralized Electronic Service System (ACCESS).<sup>9</sup> An electronically filed document must be received successfully in its entirety by the time and date it is due. Documents exempted from the electronic submission requirements must be filed manually (*i.e.*, in paper form) with Enforcement and Compliance's APO/Dockets Unit, Room 18022, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230, and stamped with the date and time of receipt by the applicable deadlines.

#### Consultations

Pursuant to sections 702(b)(4)(A)(i) and (ii) of the Act, Commerce notified representatives of the GOI of the receipt of the Petition and provided them the opportunity for consultations with respect to the CVD Petition.<sup>10</sup> Commerce held consultations with the GOI on November 9, 2018.<sup>11</sup>

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<sup>9</sup> See *Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures*, 76 FR 39263 (July 6, 2011); see also *Enforcement and Compliance; Change of Electronic Filing System Name*, 79 FR 69046 (November 20, 2014) for details of Commerce's electronic filing requirements, effective August 5, 2011. Information on help using ACCESS can be found at <https://access.trade.gov/help.aspx> and a handbook can be found at

<https://access.trade.gov/help/Handbook%20on%20Electronic%20Filing%20Procedures.pdf>.

<sup>10</sup> See Commerce letter, "Countervailing Duty Petition on Magnesium from Israel," dated October 25, 2018.

<sup>11</sup> See Memorandum, "Consultations with Officials from the Government of Israel Regarding the Countervailing

### Determination of Industry Support for the Petition

Section 702(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 702(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) at least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 702(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, Commerce shall: (i) poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A); or (ii) determine industry support using a statistically valid sampling method to poll the “industry.”

Section 771(4)(A) of the Act defines the “industry” as the producers, as a whole, of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs Commerce to look to producers and workers who produce the domestic like product. The International Trade Commission (ITC), which is responsible for determining whether “the domestic industry” has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both Commerce and the ITC must apply the same statutory definition regarding the domestic like product,<sup>12</sup> they do so for different purposes and pursuant to a separate and distinct authority. In addition, Commerce’s determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either

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Duty Petition Concerning Magnesium from Israel,” dated November 9, 2018.

<sup>12</sup> See section 771(10) of the Act.

agency contrary to law.<sup>13</sup>

Section 771(10) of the Act defines the domestic like product as “a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.” Thus, the reference point from which the domestic like product analysis begins is “the article subject to an investigation” (*i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition).

With regard to the domestic like product, the petitioner does not offer a definition of the domestic like product distinct from the scope of the investigation.<sup>14</sup> Based on our analysis of the information submitted on the record, we have determined that magnesium, as defined in the scope, constitutes a single domestic like product, and we have analyzed industry support in terms of that domestic like product.<sup>15</sup>

In determining whether the petitioner has standing under section 702(c)(4)(A) of the Act, we considered the industry support data contained in the Petition with reference to the domestic like product as defined in the “Scope of the Investigation,” in the Appendix to this notice. To establish industry support, the petitioner provided its own production of the domestic like product in 2017.<sup>16</sup> The petitioner also provided letters of support from MagPro LLC and Advanced Magnesium Alloys Corporation, providing each company’s 2017 production of the

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<sup>13</sup> See *USEC, Inc. v. United States*, 132 F. Supp. 2d 1, 8 (CIT 2001) (citing *Algoma Steel Corp., Ltd. v. United States*, 688 F. Supp. 639, 644 (CIT 1988), *aff’d* 865 F.2d 240 (Fed. Cir. 1989)).

<sup>14</sup> See Volume I of the Petition, at 11-17; *see also* General Issues Supplement, at 1 and Exhibits S-1 through S-7.

<sup>15</sup> For a discussion of the domestic like product analysis as applied to this case and information regarding industry support, *see* Countervailing Duty Investigation Initiation Checklist: Magnesium from Israel (Israel CVD Initiation Checklist), at Attachment II, Analysis of Industry Support for the Antidumping and Countervailing Duty Petitions Covering Magnesium from Israel (Attachment II). This checklist is dated concurrently with this notice and on file electronically *via* ACCESS. Access to documents filed *via* ACCESS is also available in the Central Records Unit, Room B8024 of the main Department of Commerce building.

<sup>16</sup> See Volume I of the Petition, at 2 and Exhibits I-5 and I-6; *see also* General Issues Supplement, at 7-8 and Exhibit I-S13.

domestic like product and stating each company's support for the Petition.<sup>17</sup> In addition, the petitioner provided a letter of support from the United Steel, Paper & Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, which represents workers employed in the production of the domestic like product at the petitioner's plant in Rowley, UT (Local 8319).<sup>18</sup> The petitioner compared the production of the supporters of the Petition to the estimated total production of the domestic like product for the entire domestic industry.<sup>19</sup> We relied on data provided by the petitioner for purposes of measuring industry support.<sup>20</sup>

Our review of the data provided in the Petition, the General Issues Supplement, the Second General Issues Supplement, and other information readily available to Commerce indicates that the petitioner has established industry support for the Petition.<sup>21</sup> First, the Petition established support from domestic producers (or workers) accounting for more than 50 percent of the total production of the domestic like product and, as such, Commerce is not required to take further action in order to evaluate industry support (*e.g.*, polling).<sup>22</sup> Second, the domestic producers (or workers) have met the statutory criteria for industry support under section 702(c)(4)(A)(i) of the Act because the domestic producers (or workers) who support the Petition account for at least 25 percent of the total production of the domestic like product.<sup>23</sup> Finally, the domestic producers (or workers) have met the statutory criteria for industry support under section 702(c)(4)(A)(ii) of the Act because the domestic producers (or workers) who support the

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<sup>17</sup> See Volume I of the Petition, at 1-2 and Exhibits I-3 and I-4.

<sup>18</sup> *Id.* at 1 and Exhibit I-2.

<sup>19</sup> *Id.* at 2-3 and Exhibits I-5 and I-6; *see also* General Issues Supplement, at 6-8 and Exhibits I-S12 and I-S13.

<sup>20</sup> *Id.* For further discussion, *see* Israel CVD Initiation Checklist, at Attachment II.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*; *see also* section 702(c)(4)(D) of the Act.

<sup>23</sup> *See* Israel CVD Initiation Checklist, at Attachment II.

Petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petition.<sup>24</sup>

Commerce finds that the petitioner filed the Petition on behalf of the domestic industry because it is an interested party as defined in sections 732(b)(1) and 771(9)(C) of the Act, and it has demonstrated sufficient industry support with respect to the CVD investigation that it is requesting that Commerce initiate.<sup>25</sup>

### Injury Test

Because Israel is a “Subsidies Agreement Country” within the meaning of section 701(b) of the Act, section 701(a)(2) of the Act applies to this investigation. Accordingly, the ITC must determine whether imports of the subject merchandise from Israel materially injure, or threaten material injury to, a U.S. industry.

### Allegations and Evidence of Material Injury and Causation

The petitioner alleges that imports of the subject merchandise are benefitting from countervailable subsidies and that such imports are causing, or threaten to cause, material injury to the U.S. industry producing the domestic like product. In addition, the petitioner alleges that subject imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act.<sup>26</sup>

The petitioner contends that the industry’s injured condition is illustrated by the significant volume and increasing market share of subject imports; reduced market share; underselling and price depression or suppression; declines in capacity, production, U.S. shipments, and capacity utilization; decline in employment variables; decline in the domestic

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<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> See Volume I of the Petition, at 21 and Exhibit I-13.



industry's financial performance; and lost sales and revenues.<sup>27</sup> We have assessed the allegations and supporting evidence regarding material injury, threat of material injury, and causation, and determined that these allegations are properly supported by adequate evidence, and meet the statutory requirements for initiation.<sup>28</sup>

#### Initiation of CVD Investigation

Based on the examination of the Petition, we find that the Petition meets the requirements of section 702 of the Act. Therefore, we are initiating a CVD investigation to determine whether imports of magnesium from Israel benefit from countervailable subsidies conferred by the GOI. In accordance with section 703(b)(1) of the Act and 19 CFR 351.205(b)(1), unless postponed, we will make our preliminary determination no later than 65 days after the date of this initiation.

Based on our review of the Petition, we find that there is sufficient information to initiate a CVD investigation on each of the subsidy programs alleged in the Petition, with certain limitations. For a full discussion of the basis for our decision to initiate on each program, *see* Israel CVD Initiation Checklist. A public version of the initiation checklist for this investigation is available on ACCESS.

#### Respondent Selection

Although Commerce normally relies on import data from using United States Customs and Border Protection (CBP) import statistics to determine whether to select a limited number of producers/exporters for individual examination in CVD investigations, the petitioner identified only one company in Israel, *i.e.*, Dead Sea Magnesium, Ltd., as a producer/exporter of

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<sup>27</sup> *Id.* at 18-30 and Exhibits I-5, I-6, I-10, I-12, I-14, and I-15.

<sup>28</sup> *See* Israel CVD Initiation Checklist, at Attachment III, Analysis of Allegations and Evidence of Material Injury and Causation for the Antidumping and Countervailing Duty Petitions Covering Magnesium from Israel (Attachment III).

magnesium and provided independent, third-party information as support.<sup>29</sup> The petitioner developed this list using ship manifest data published by CBP's Automated Manifest System and supported it with independent, third-party information.<sup>30</sup> We currently know of no additional producers/exporters of magnesium from Israel. Accordingly, Commerce intends to examine all known producers/exporters (*i.e.*, DSM). We invite interested parties to comment on this issue. Such comments may include factual information within the meaning of 19 CFR 351.102(b)(21). Parties wishing to comment must do so within three business days of the publication of this notice in the *Federal Register*. Comments must be filed electronically using ACCESS. An electronically-filed document must be received successfully in its entirety by Commerce's electronic records system, ACCESS, by 5 p.m. ET by the specified deadline.

#### Distribution of Copies of the Petition

In accordance with section 702(b)(4)(A)(i) of the Act and 19 CFR 351.202(f), copies of the public versions of the Petition have been provided to the GOI *via* ACCESS. To the extent practicable, we will attempt to provide a copy of the public version of the Petition to each exporter named in the Petition, as provided under 19 CFR 351.203(c)(2).

#### ITC Notification

We will notify the ITC of our initiation, as required by section 702(d) of the Act.

#### Preliminary Determination by the ITC

The ITC will preliminarily determine, within 45 days after the date on which the Petition was filed, whether there is a reasonable indication that imports of magnesium from Israel are

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<sup>29</sup> See Volume I of the Petition, at Exhibits I-8 and I-12, Volume III of the Petition, at Exhibit III-2 (ship manifest data published by CBP's Automated Manifest System), and General Issues Supplement at 1

<sup>30</sup> *Id.*

materially injuring, or threatening material injury to, a U.S. industry.<sup>31</sup> A negative ITC determination will result in the investigation being terminated.<sup>32</sup> Otherwise, this investigation will proceed according to statutory and regulatory time limits.

#### Submission of Factual Information

Factual information is defined in 19 CFR 351.102(b)(21) as: (i) evidence submitted in response to questionnaires; (ii) evidence submitted in support of allegations; (iii) publicly available information to value factors under 19 CFR 351.408(c) or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2); (iv) evidence placed on the record by Commerce; and (v) evidence other than factual information described in (i)–(iv). 19 CFR 351.301(b) requires any party, when submitting factual information, to specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted<sup>33</sup> and, if the information is submitted to rebut, clarify, or correct factual information already on the record, to provide an explanation identifying the information already on the record that the factual information seeks to rebut, clarify, or correct.<sup>34</sup> Time limits for the submission of factual information are addressed in 19 CFR 351.301, which provides specific time limits based on the type of factual information being submitted. Interested parties should review the regulations prior to submitting factual information in this investigation.

#### Extensions of Time Limits

Parties may request an extension of time limits before the expiration of a time limit established under 19 CFR 351.301, or as otherwise specified by the Secretary. In general, an extension request will be considered untimely if it is filed after the expiration of the time limit

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<sup>31</sup> See section 703(a)(2) of the Act.

<sup>32</sup> See section 703(a)(1) of the Act.

<sup>33</sup> See 19 CFR 351.301(b).

<sup>34</sup> See 19 CFR 351.301(b)(2).

established under 19 CFR 351.301. For submissions that are due from multiple parties simultaneously, an extension request will be considered untimely if it is filed after 10:00 a.m. ET on the due date. Under certain circumstances, we may elect to specify a different time limit by which extension requests will be considered untimely for submissions which are due from multiple parties simultaneously. In such a case, we will inform parties in the letter or memorandum of the deadline (including a specified time) by which extension requests must be filed to be considered timely. An extension request must be made in a separate, stand-alone submission; under limited circumstances we will grant untimely-filed requests for the extension of time limits. Parties should review *Extension of Time Limits; Final Rule*, 78 FR 57790 (September 20, 2013), available at <http://www.gpo.gov/fdsys/pkg/FR-2013-09-20/html/2013-22853.htm>, prior to submitting factual information in this investigation.

#### Certification Requirements

Any party submitting factual information in an AD or CVD proceeding must certify to the accuracy and completeness of that information.<sup>35</sup> Parties must use the certification formats provided in 19 CFR 351.303(g).<sup>36</sup> Commerce intends to reject factual submissions if the submitting party does not comply with the applicable certification requirements.

#### Notification to Interested Parties

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305. On January 22, 2008, Commerce published *Antidumping and Countervailing Duty Proceedings: Documents Submission Procedures; APO Procedures*, 73 FR 3634 (January 22, 2008). Parties wishing to participate in this investigation should ensure that they meet the

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<sup>35</sup> See section 782(b) of the Act.

<sup>36</sup> See *Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings*, 78 FR 42678 (July 17, 2013) (“*Final Rule*”); see also frequently asked questions regarding the *Final Rule*, available at [http://enforcement.trade.gov/tlei/notices/factual\\_info\\_final\\_rule\\_FAQ\\_07172013.pdf](http://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf).

requirements of these procedures (*e.g.*, the filing of letters of appearance as discussed at 19 CFR 351.103(d)).

This notice is issued and published pursuant to sections 702 and 777(i) of the Act and 19 CFR 351.203(c).

Dated: November 13, 2018.

**Gary Taverman,**

*Deputy Assistant Secretary*

*for Antidumping and Countervailing Duty Operations,  
performing the non-exclusive functions and duties of the  
Assistant Secretary for Enforcement and Compliance.*

## **Appendix**

### **Scope of the Investigation**

The products covered by this investigation are primary and secondary pure and alloy magnesium metal, regardless of chemistry, raw material source, form, shape, or size (including, without limitation, magnesium cast into ingots, slabs, t-bars, rounds, sows, billets, and other shapes, and magnesium ground, chipped, crushed, or machined into raspings, granules, turnings, chips, powder, briquettes, and any other shapes). Magnesium is a metal or alloy containing at least 50 percent by actual weight the element magnesium. Primary magnesium is produced by decomposing raw materials into magnesium metal. Secondary magnesium is produced by recycling magnesium-based scrap into magnesium metal. The magnesium covered by this investigation also includes blends of primary magnesium, scrap, and secondary magnesium.

The subject merchandise includes the following pure and alloy magnesium metal products made from primary and/or secondary magnesium: (1) products that contain at least 99.95 percent magnesium, by actual weight (generally referred to as “ultra-pure” or “high purity” magnesium); (2) products that contain less than 99.95 percent but not less than 99.8 percent magnesium, by actual weight (generally referred to as “pure” magnesium); and (3) chemical combinations of magnesium and other material(s) in which the magnesium content is 50 percent or greater, but less than 99.8 percent, by actual weight, whether or not conforming to an “ASTM Specification for Magnesium Alloy.”

The scope of this investigation excludes mixtures containing 90 percent or less magnesium in granular or powder form by actual weight and one or more of certain non-magnesium granular materials to make magnesium-based reagent mixtures, including lime, calcium metal, calcium silicon, calcium carbide, calcium carbonate, carbon, slag coagulants, fluorspar, nepheline syenite, feldspar, alumina (A1203), calcium aluminate, soda ash, hydrocarbons, graphite, coke, silicon, rare earth metals/mischmetal, cryolite, silica/fly ash, magnesium oxide, periclase, ferroalloys, dolomite lime, and colemanite.

The merchandise subject to this investigation is classifiable under items 8104.11.0000, 8104.19.0000, and 8104.30.0000 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS items are provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

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